

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

<b>United States of America,</b>	)	<b>Civil Case No.: 1:21-CV-00564-CAB</b>
	)	
<b>Plaintiff,</b>	)	
	)	
<b>-vs-</b>	)	
	)	<b>JUDGE CHRISTOPHER A. BOYKO</b>
<b>Real Property Located at</b>	)	
<b>100 Mountain View Drive,</b>	)	
<b>Moreland Hills, Ohio,</b>	)	
<b>Cuyahoga County Permanent Parcel</b>	)	
<b>Nos: 913-06-001, 913-06-005, et al,</b>	)	
	)	
<b>Defendants.</b>	)	

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**SELECT HOMES OF NORTHEAST OHIO LTD’S MOTION FOR LEAVE  
TO FILE SUR-REPLY BRIEF IN OPPOSITION  
TO UNITED STATES’ MOTION FOR A STAY AS TO DEFENDANT NO. 1 ONLY**

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**NOW COMES** Intervener, **SELECT HOMES OF NORTHEAST OHIO, LTD.** (“Select Homes”), by and through its undersigned counsel, and pursuant to Local Rule 7.1, hereby respectfully requests permission to file the herein Sur-Reply Brief in Opposition to a stay of in-rem Defendant No. 1, being the real property located at 100 Mountain View Drive. The Government’s Motion to Stay this Civil Forfeiture proceeding, as that stay relates to in-rem Defendant No. 1 only,<sup>1</sup> implicates unique issues specific to 100 Mountain View, that the Court should hear now, not later.

1. The Government’s in-rem interest in Defendant No. 1, the real property located at 100 Mountain View Drive, Moreland Hills, Ohio, Permanent Parcel Nos. 913-06-001, 913-06-

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<sup>1</sup> This Sur-Reply to the Government’s Motion for a Stay is specific to in-rem Defendant No. 1 only. Select Homes does not oppose the United States’ Motion for a Stay, as concerns any other parties, Claimants or in-rem defendants.

005 (“100 Mountain View Drive”), is \$102,450.99 in arrears in Cuyahoga County real estate taxes.<sup>2</sup> Unless this Court orders Claimants Eyton Senders and 100 Mountain View LLC<sup>3</sup> to resolve the delinquent real estate taxes at 100 Mountain View Drive, and further order Eyton Senders and 100 Mountain View LLC to remain current on all real estate tax assessments and liabilities, the equity in in-rem Defendant No. 1 100 Mountain View will continue to dissipate in value, in favor of the Cuyahoga County Treasurer, and will continue to realize diminishing cash proceeds for the Government. If disposed of later, rather than sooner, the disposition of 100 Mountain View, will incur more real estate tax liabilities, and the cash proceeds to the Government will be substantially reduced.

2. On November 9, 2020, Select Homes’ legal counsel Mr. Yelsky, emailed AUSA Aaron Howell and AUSA Henry DeBaggis, that unless properly winterized, 100 Mountain View Drive was at risk for severe damage, once the Winter of 2020-2021 thaws. None of the furnaces at 100 Mountain View Drive were working; and, 100 Mountain View Drive was at risk for severe water related damages. (*See*: email attached as Exhibit “A”).

That prediction came true, when the Winter 2020-2021 freeze, began to thaw. *See*: attached Exhibit “B”, Mr. Yelsky’s March 10, 2021 email to AUSA Henry DeBaggis and his Assistant Bridget Piascik, where, as predicted, the water main to 100 Mountain View Drive burst, causing extreme water intrusion. Although the water main has since been turned off, the extensive water intrusion has caused severe structural problems to the luxury residence at 100

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<sup>2</sup> *See*: attached Exhibit “C”; also attached as Exhibit “C” to Select Homes’ Motion to Intervene, at ECF 14, filed May 10, 2021.

<sup>3</sup> The only Claimants who allege interests in 100 Mountain View Drive.

Mountain View, and this extensive water intrusion is creating mold and mildew problems, that will render the luxury residence at 100 Mountain View Drive uninhabitable, rapidly deteriorating and decreasing the value to 100 Mountain View Drive.

3. Select Homes has no objection to the Government's Motion to Stay this Civil Forfeiture proceeding, as concerns all other Claimants and in-rem defendants. However, as concerns in-rem defendant No. 1, 100 Mountain View Drive<sup>4</sup>, unless this Court carves out an exception for this in-rem defendant, and exercises its equitable jurisdiction to explore ways to either:

- a. Order Claimants Eyton Senders and 100 Mountain View LLC to immediately remediate the mold and mildew issues rapidly escalating at 100 Mountain View Drive;
- b. To immediately pay all unpaid real estate taxes and remain current in future real estate taxes and special assessments; and,
- c. Order Eyton Senders and 100 Mountain View LLC to maintain sufficient liability insurance on 100 Mountain View Drive,

this in-rem defendant No. 1 will continue to rapidly decrease in value and become uninhabitable, thereby reducing the Government's expected cash proceeds.

4. Unless those Claimants who claim an interest in 100 Mountain View Drive, take affirmative steps to maintain the integrity of that property, this Honorable Court should exclude this in-rem defendant from the Stay requested by the Government. The longer the Government stays this litigation, and the longer Claimants Eyton Senders and 100 Mountain View LLC are not held accountable for the payment of real estate taxes and remediating the predictable and unacceptable water intrusion damages; and, the longer the failure to pay real estate taxes

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<sup>4</sup> In which Eyton Senders and 100 Mountain View LLC have interposed claims of ownership.

continues, the faster that this in-rem defendant will continue to depreciate in value.

5. Select Homes does not need to conduct any civil discovery against the Government, against Eyton Senders, against Justen Balay, or against other Claimants or in-rem defendants, to dispose of 100 Mountain View Drive. Staying this case as to 100 Mountain View Drive, without ordering Claimants Eyton Senders and 100 Mountain View LLC to pay real estate taxes, to maintain 100 Mountain View Drive and to keep 100 Mountain View Drive insured against loss and damage, will result in a predictable diminution in value to 100 Mountain View Drive. Accordingly, any Stay the Court may order, should except 100 Mountain View from that Stay.

6. Finally, the Court should explore whether Claimants Eyton Senders and 100 Mountain View LLC oppose the early disposition of 100 Mountain View Drive, through the U.S. Marshal's normal and ordinary course of disposing of real estate.

7. It is therefore respectfully requested that the Court deny the Stay as to in-rem Defendant No. 1, 100 Mountain View Drive. It is further requested that the Court allow Select Homes leave to file the herein Sur-Reply Brief.

Respectfully submitted,

/s/ Mitchell J. Yelsky  
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